
OLR Bill Analysis

sSB 494 (File 619, as amended by Senate "A")*

AN ACT CONCERNING GUARDIANS AD LITEM AND ATTORNEYS FOR MINOR CHILDREN IN FAMILY RELATIONS MATTERS.

SUMMARY:

This bill makes several modifications to laws related to the appointment of guardians ad litem (GALs) and counsels for minor children (CMC). It:

1. establishes new procedures for courts to follow when appointing GALs and CMCs in family relations matters or before allowing certain third-party interventions, but exempts emergency situations from the procedures;
2. allows parties to (a) request the appointment of a specific GAL or CMC, with a written agreement, or (b) choose one from a list of 15 provided by the court;
3. allows the court to appoint a GAL or CMC from the list if the parties do not make a selection within a specific period of time and requires the court to consider the unique circumstances of the parties and child when doing so;
4. requires the court to include in its orders the GAL's or CMC's specific duties, appointment duration, deadline for reporting to the court, fee schedule, and proposed schedule for periodic court review;
5. requires GALs and CMCs to (a) consider the child's best interest and consider a list of factors when doing so and (b) file an affidavit with the court on the hours and expenses billed that must become a part of the case file;
6. requires the court to allow a GAL and CMC to participate in

certain court proceedings when it is in the child's best interests and in a manner that minimizes legal fees;

7. allows health care professionals to participate in certain court proceedings and limits the circumstances under which a GAL or CMC may report on any medical diagnosis or conclusion;
8. allows parties, in a case involving a minor child's care, custody, support, education, or visitation, to file a motion to seek removal of a GAL or CMC and requires the Judicial Branch to establish procedures to have a hearing on such a motion;
9. establishes new compensation requirements, such as (a) allowing courts to order payment of GALs' reasonable fees in the same manner currently available to CMCs, (b) prohibiting courts from ordering payment of fees from a minor child's college savings funds, other exempt property, or in the case of those who cannot afford it, through the use of credit cards, and (c) allowing courts to order the calculation of fees on a sliding-scale basis (i.e., fees that vary based on a person's ability to pay), using a methodology the Judicial Branch develops;
10. requires the Judicial Branch to develop a (a) GAL and CMC professional code of conduct and (b) publication on GALs' and CMCs' roles and responsibilities applicable to family relations matters and the process for indigent parties to apply for a GAL or CMC appointment;
11. requires the court to specify the basis for its decision in custody, care, education, visitation, and support orders; and
12. modifies the factors that are considered when determining a person's eligibility for the appointment of counsel in family relations matters.

The bill also makes technical and conforming changes.

*Senate Amendment "A" replaces the underlying bill with similar provisions. In doing so, the amendment (1) increases from five to 15,

the number of eligible GALs or CMCs a court must provide to parties to choose from; (2) increases the frequency of periodic court review of GALs and CMCs from every six months to every three months; and (3) prohibits the court from ordering the payment of GAL's and CMC's fees (a) from exempt property or (b) through the use of credit cards, for parties who cannot afford it.

It also:

1. requires the court, when appointing GALs and CMCs, to consider the unique circumstances of the parties and child;
2. requires GALs and CMCs to file an affidavit with the court on the hours and expenses billed in family relations matters;
3. limits the appointment of GALs and CMCs in divorce, annulment, or legal separation cases to only after reasonable options and efforts to resolve disputes have been made;
4. requires the court to allow GALs and CMCs to participate in court proceedings at times that minimize the legal fees incurred by the parties;
5. establishes limitations on a healthcare professional's report and records;
6. provides a list of factors that a GAL or CMC must consider when determining the child's best interest;
7. requires the Judicial Branch to include in its publication a description of the process for an indigent party to apply for GAL or CMC appointment in a family relations matter;
8. requires the court to specify the basis for its decision in custody, care, education, visitation, and support orders; and
9. modifies the factors that are considered when determining a person's eligibility for the appointment of counsel in family relations matters.

EFFECTIVE DATE: October 1, 2014, except for the (1) Judicial Branch's publication, which is effective July 1, 2014 and (2) GAL and CMC professional code of conduct, which is effective upon passage.

§§ 1-3 — GAL AND CMC NEW APPOINTMENT PROCEDURE

By law, a GAL is a person, not necessarily an attorney, appointed by the court during certain proceedings to gather information at the court's request and report on what he or she believes to be in a person's best interest. A CMC is an attorney appointed by the court to advocate in court for a minor child's best interest.

New Procedure

By law, a court may appoint a GAL or CMC in "family relations matters" involving minor children (see BACKGROUND). The court may also appoint a CMC in certain cases where a third party wishes to be awarded full or partial custody of a minor child.

The bill authorizes the court to appoint a GAL for a minor child under the same circumstances as it may appoint a CMC. Thus, if the court deems it to be in the best interest of a child, it may appoint a CMC or GAL at any time (1) after the return date of an annulment, divorce, or legal separation or (2) when any such action is controversial. The court may do so on its own motion or at the request of either party, a legal guardian, or a child who is old enough and capable of making an intelligent request.

Under the bill, when a GAL or CMC is being appointed in any of the cases mentioned above, the:

1. court must provide the parties with a list of 15 people it has determined eligible to serve as GAL or CMC;
2. parties, within two weeks after the court provides the list, must notify the court in writing of the name of the person they have selected to serve; and
3. court must appoint one of the people from the list to serve, if the parties cannot agree or do not notify the court in a timely

manner.

The court must consider any unique circumstances of the parties and any child when determining whether a person is eligible to serve as GAL or CMC in a particular case. Under the bill, such circumstances include:

1. financial circumstances;
2. language barriers;
3. transportation barriers;
4. physical, mental, or learning disabilities; and
5. the geographic proximity of the person's office to the residence of each of the parties and to the court where the matter is pending.

Under the bill, the new appointment procedures do not apply in an emergency situation or if the parties ask the court to appoint a specific GAL or CMC by submitting a written agreement to the court with the name of the person they have selected to serve.

Duties, Duration of Appointment, Fee Schedule, and Periodic Review

Under the bill, within 21 days after the court has ordered the appointment of a GAL or CMC, it must enter a subsequent order, which must include the:

1. specific nature of GAL's or CMC's work;
2. appointment end date, which may be extended by a court order for good cause shown;
3. deadline for the GAL or CMC to report to the court on the work he or she has done;
4. fee schedule, which must include the (a) retainer amount, (b) hourly rate, (c) each party's share of the retainer and hourly fees,

and (d) if applicable, information related to the calculation of fees on a sliding-scale basis; and

5. proposed schedule of periodic court review of the GAL's or CMC's work done and fees charged.

Under the bill, the periodic court review of the GAL's or CMC's work and fees must occur at least every three months after his or her appointment. The bill allows the parties and the GAL or CMC to waive the periodic court review by filing a written agreement with the court.

GAL and CMC Affidavit

The bill requires a GAL and CMC in a family relations matter to file an affidavit with the court, within 30 days after the entry of a final judgment, that includes the:

1. case name and docket number,
2. total number of hours and expenses billed, and
3. hourly fee and total amount charged.

A GAL and CMC must not charge the parties for the preparation of the affidavit, which must be part of the case file.

§ 2 — DIVORCE, ANNULMENT, OR LEGAL SEPARATION CASES

Limitations on GAL or CMC Appointment

Under the bill, in a divorce, annulment, or legal separation case the court may appoint a GAL or CMC only when, in its discretion, reasonable options and efforts to resolve the parties' dispute regarding the custody, care, education, visitation, or support of a minor child have been made. The bill allows the court to make such a decision when the parties have no agreement on a GAL or CMC.

GAL's, CMC's, and Health Care Professional's Participation in Court Proceedings

Under current law, a CMC must participate in a minor child's custody, care, education, visitation, or support proceeding if the court deems it to be in the child's best interest. The bill also requires a GAL's

participation under those circumstances.

Under the bill, to the extent practicable, the court must allow a GAL or CMC to participate at (1) the beginning or conclusion of the matter or (2) any other time the court deems appropriate to minimize legal fees incurred by the parties.

The bill prohibits a GAL or CMC from speaking or reporting to the court on any medical diagnosis or conclusion made by a health care professional who is treating the minor child, unless the parties have refused to cooperate in paying for or obtaining records containing the health care professional's medical diagnosis or conclusion. Under the bill, if the court deems it to be in the child's best interests, the health care professional must be heard on matters pertaining to the child's interests, including the child's custody, care, support, education, and visitation.

Best Interest of the Child Factors

The bill requires a GAL or CMC to consider the best interest of the child and provides a list of factors that they must consider in doing so. The bill does not require a GAL or CMC to assign any weight to any of the factors considered. The factors include:

1. the child's temperament and developmental needs;
2. the parent's capacity and disposition to understand and meet the child's needs;
3. any relevant and material information obtained from the child, including his or her informed preferences;
4. the wishes of the child's parents as to custody;
5. the child's past and current interaction and relationship with each parent, the child's siblings, and any other person who may significantly affect the child's best interests;
6. each parent's willingness and ability to facilitate and encourage a continuing parent-child relationship between the child and the

- other parent as is appropriate, including compliance with any court orders;
7. any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute;
 8. each parent's ability to be actively involved in the child's life;
 9. the child's adjustment to his or her home, school, and community environments;
 10. the length of time the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, but the GAL or CMC may consider it favorably that a parent voluntarily leaves the child's family home temporarily to alleviate stress in the household;
 11. the stability of the child's existing or proposed residences;
 12. the involved individuals' mental and physical health, except the disability of a proposed custodial parent or other party must not determine custody unless the proposed custodial arrangement is not in the child's best interests;
 13. the child's cultural background;
 14. the effect of an abuser's actions on the child, if any domestic violence has occurred between the parents or between a parent and another individual or the child;
 15. whether the child or his or her sibling has been abused or neglected; and
 16. whether a party satisfactorily completed the legally required parenting education program.

§ 4 — STANDING TO SEEK REMOVAL OF GAL OR CMC

The bill allows parties to a case involving a minor child's care, custody, support, education, or visitation to file a motion to seek

removal of a GAL or CMC (i.e., it gives such parties “standing”).

The bill requires the Judicial Branch to establish procedures to have a hearing on the motion for removal of GALs and CMCs.

Under the bill, the court (1) may, before hearing the motion, refer the parties to the Judicial Branch’s family services unit and (2) if there is no resolution, must have a hearing and make a decision on the motion for removal.

§ 5 — GAL AND CMC COMPENSATION

Reasonable Fees

Under current law, if the court appoints an attorney for a minor child in a case involving divorce, annulment, legal separation, child support enforcement, revocation or construction of wills, or in any family relations matter, it may order the attorney’s reasonable fees be paid:

1. by the father, mother, or intervening party, individually or in any combination;
2. from the child’s estate, in whole or in part; or
3. by the Public Defender Services commissioner, if the child is receiving or has received state aid or care.

The bill allows the court, in cases where a GAL is appointed, to also order these payment options for the GAL’s reasonable fees.

The bill updates the reference to the term “attorney for a minor child” with the terminology “counsel for a minor child” (CMC), for consistency.

College Savings Accounts, Credit Cards, and Exempt Property

The bill prohibits the court from ordering the father, mother, or intervening party to pay the GAL’s or CMC’s reasonable fees from (1) income or assets that are not subject to debt collection or court order (i.e., “exempt property”) or (2) a college savings account established for the minor child, including tuition programs established and

maintained by a state or its agency or instrumentality, or by one or more eligible education institutions (i.e., “qualified tuition programs”) (see BACKGROUND).

The bill also prohibits the court from ordering a party who does not have the ability to pay the GAL’s or CMC’s reasonable fees to do so through the use of a credit card.

Sliding-Scale Basis

Under the bill, in cases where the court appoints a GAL or CMC, after considering the parties’ income and assets, the judge may order the fees to be calculated on a sliding-scale basis. The bill requires the Judicial Branch to develop and implement a methodology for calculating GALs’ and CMCs’ fees on a sliding-scale basis.

§ 6 — JUDICIAL BRANCH’S FAMILY RELATIONS PUBLICATION

The bill requires the Judicial Branch to develop a publication on the roles and responsibilities of GALs and CMCs in family relations matters. The publication must (1) be available to the public in hard copy and on the Judicial Branch’s website and (2) include detailed information describing the process for an indigent party to apply to the court for GAL and CMC appointment in a family relations matter.

§ 7 — GAL AND CMC CODE OF CONDUCT

Under the bill, by October 1, 2014, the Judicial Branch must develop and implement a professional code of conduct for GALs and CMCs appointed in family relations matters.

§ 8 — CUSTODY, CARE, EDUCATION, VISITATION, AND SUPPORT ORDERS

By law, the court may make or modify orders regarding custody, care, education, visitation, and support of children. It may assign parental responsibilities jointly, or may award custody to either parent or to a third party. The law, unchanged by the bill (1) requires the court to consider the best interests of the child and (2) provides a list of factors the court may consider in doing so.

Under existing law, the court is not required to assign a weight to

any of the factors that it considers. The bill requires the court to specify the basis for its decision.

§ 9 — ELIGIBILITY FOR APPOINTMENT OF COUNSEL

By law, if a child or youth and his or her parents or guardians are unable to afford counsel in a family relations matter, the judicial authority must determine their eligibility for counsel (e.g., a public defender). To determine their eligibility for counsel, the parents or guardians must complete a sworn written statement showing their liabilities, assets, income, sources of income, and any other information required on the Public Defender Services Commission's forms.

The bill requires the judicial authority, when determining eligibility for appointment of counsel, to examine the parent's or guardian's present ability to afford counsel. But, the judicial authority cannot consider a parent's or guardian's prior history of payments to counsel or prior ability to afford counsel as evidence of such parent's or guardian's present ability to afford counsel.

BACKGROUND

Family Relations Matters

By law, "family relations matters" are matters affecting or involving divorce; legal separation; annulment; alimony; support; custody; visitation; change of name; civil restraining orders; civil support obligations; petitions on behalf of a mentally ill person not charged with a criminal offense; wrongful convictions; paternity; appeals from probate court decisions concerning adoption, termination of parental rights, appointment and removal of guardians, custody of a minor child, appointment and removal of conservators, orders for custody of any child, and orders to commit persons to public and private institutions and to other appropriate facilities; actions related to prenuptial and separation agreements and to matrimonial and civil union decrees of a foreign jurisdiction; dissolution; legal separation or annulment of a civil union performed in a foreign jurisdiction; interstate child custody matters; and all other matters within the Superior Court's jurisdiction concerning children or family relations as the court determines (CGS § 46b-1).

Exempt Property

By law, exempt properties are those that are not subject to any debt collection process or court order. They include:

1. necessary apparel, bedding, foodstuffs, household furniture, appliances, tools, books, and instruments;
2. burial plots;
3. public assistance payments;
4. health and disability insurance payments;
5. workers' compensation, Social Security, veterans, and unemployment benefits;
6. court-approved child support payments;
7. one motor vehicle valued up to \$3,500 (i.e., fair market value less liens);
8. wedding and engagement rings;
9. residential utility deposits for one residence, and one residential security deposit;
10. alimony and support, other than child support, if wages are exempt from execution;
11. up to \$1,000 interest in any property;
12. certain interests and accrued dividends in certain unmatured life insurance contracts; and
13. owner-occupied residential property valued up to \$75,000 (CGS §§ 52-352a & 352b).

Qualified Tuition Program

The term "qualified tuition program" means a program established and maintained by a state, its agency or instrumentality, or by one or

more eligible educational institutions that allows a person to:

1. purchase tuition credits or certificates on behalf of a designated beneficiary entitling him or her to the waiver or payment of his or her qualified higher education expenses or
2. make contributions to an account established for the beneficiary's qualified higher education expenses.

A qualified tuition program must meet other specified requirements that pertain to things such as cash contributions, separate accounting, investment direction, and tax treatment (26 U.S.C.A. § 529(b)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 35 Nay 0 (04/01/2014)